

Appendix V-2 Procedures for Administrative Fine Cases

State of New Hampshire

FROM: Gretchen Rule
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AT (OFFICE) DES O/C

SUBJECT: Procedures for Administrative Fine Cases

To: File

The purpose of this memo is to summarize the procedures that are followed regarding communications among Department staff in an administrative fine proceeding. In order to avoid impermissible *ex parte* communications, parties (including Division staff) should not communicate directly or indirectly with either the Hearing Officer or the Commissioner (as the final decision-maker) in connection with any administrative fine proceeding unless all parties have been given an opportunity to participate.

The Division

The three divisions within DES (Air Resources, Water, and Waste Management) have the authority to initiate an administrative fine proceeding. If the Division, after consultation among program staff, supervisors, managers, and the Division Director, believes that a violation has occurred for which an administrative fine is appropriate, program staff will draft a notice of proposed administrative fine and hearing ("NPF/H") for review by the DES Enforcement Coordinator. Program staff may not discuss any case that is under development or that is pending with the Hearing Officer or the Commissioner.

DES Enforcement Coordinator/Paralegal

The DES Enforcement Coordinator reviews the draft NPF/H and discusses any questions with program staff, supervisors, managers and/or the Division Director. The DES Enforcement Coordinator may also discuss the case with the Assistant Commissioner. Once the draft NPF/H is approved by the DES Enforcement Coordinator, the Enforcement Paralegal assigns a docket number and hearing date for the case, and prepares the final NPF/H for the Division Director's signature. Once the NPF/H is signed, the Enforcement Paralegal mails the NPF/H and begins tracking the case. The DES Enforcement Coordinator and the Assistant Commissioner are available to discuss strategies that may be used at the hearing with the Division. The DES Enforcement Coordinator may not discuss any pending case with the Hearing Officer or the Commissioner.

Hearing Officer

Before the hearing, the Hearing Officer reviews the NPF/H that has been issued and the relevant administrative fine schedule to determine what facts must be established to support imposing the fine. The Hearing Officer has no prior knowledge of the alleged violation(s) other

than what is identified in the NPF/H. The Hearing Officer conducts the hearing. After the hearing, the Hearing Officer reviews the record and prepares a recommendation to the Commissioner as to whether to impose an administrative fine. After the Commissioner reviews the recommendation and the record and reaches a decision, the Hearing Officer prepares the Notice of Decision. The Hearing Officer may not discuss any pending case with the DES Enforcement Coordinator, Assistant Commissioner, or Division staff unless all parties have an opportunity to participate.

Assistant Commissioner

The Assistant Commissioner works with the DES Enforcement Coordinator and Division staff to develop administrative fine cases and interfaces with members of the public (or other non-DES personnel) on cases of interest to them. The Assistant Commissioner may not discuss any pending case with the Hearing Officer or the Commissioner unless all parties have an opportunity to participate.

Commissioner

The Commissioner reviews the recommendation and record and determines the amount of the fine, if any, to impose. The approved or modified recommendation is returned to the Hearing Officer for preparation of the Notice of Decision; the Commissioner then signs and issues the Notice of Decision. The Commissioner may discuss a pending case with the Hearing Officer but will not discuss any pending case with the DES Enforcement Coordinator, Assistant Commissioner, or Division staff unless all parties have an opportunity to participate. The Commissioner also will not knowingly discuss with any member of the public any administrative fine case in which a final decision has not been rendered unless all parties have an opportunity to participate. If a party contacts the Commissioner about a pending administrative fine case, if/when the Commissioner becomes aware of the underlying action the call will be terminated and the substance of the conversation will be made part of the record and all parties will have an opportunity to respond to the comments made.